WRITTEN COMMENTS

Date: 02/03/2012

Committee: House Health

Department:	Education
Person Testifying:	Kathryn S. Matayoshi, Superintendent of Education
Title of Bill:	HB 2312 RELATING TO TORTS. Liability; Exceptions; Good Faith; Cardiopulmonary Resuscitation; Automated External Defibrillator Program
Purpose of Bill:	Relieves good Samaritans who perform cardiopulmonary resuscitation in good faith to victims in a perceived medical emergency from civil damages. Amends definition of automated external defibrillator program to include proper maintenance of such devices. Amends definition of good faith to include a reasonably prudent person standard. Defines school and perceived medical emergency
Department's Position:	The Department of Education (Department) supports H.B. 2312 as written. The Department currently has automated external defibrillators (AEDs) in 43 high school athletic departments via a grant from the Hawaii Medical Service Association (HMSA) in 2006. There are also schools that may have purchased AEDs or received AEDs through other grant programs.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
H.B. NO. 2312, RELATING TO TORTS.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

DATE: Friday, February 3, 2012 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Robin M. Kishi, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General ("Department") appreciates the intent of this bill, but has concerns regarding the language of the proposed amendments.

The purpose of the bill is to broaden the immunity from liability for those, who in good faith, voluntarily provide cardiopulmonary resuscitation in cases of medical emergencies, and to broaden the definition of the emergencies. The Department recognizes that the intent of the bill is to extend the immunity so that lay rescuers will be encouraged, rather than dissuaded, from providing emergency care and supports that intent.

The proposed amendment to subsection (h) of section 663-1.5, Hawaii Revised Statutes, on page 4, lines 3-6, defines "cardiopulmonary resuscitation" as "an emergency procedure consisting of the manual application of chest compressions and ventilations to maintain circulation and breathing to patients in cardiac arrest." As phrased, the immunity would only cover those rescuers who apply the combination chest compression with ventilation procedure. Therefore, the immunity would not cover those who apply only chest compressions.

In 2010, the American Heart Association amended its Guidelines for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC). Among the amendments to the guidelines was an emphasis on "hands-only" chest compressions, without the rescue breaths that had been recommended in the prior guidelines. Studies indicated that the compression only procedure was easier for an untrained rescuer to perform and that the survival rates were similar to compression with rescue breaths.

Therefore, in order for the immunity to cover those who perform only the chest compressions, the definition should be changed to read, "an emergency procedure consisting of the manual application of chest compressions, with or without ventilations to maintain circulation for patients in cardiac arrest."

The proposed definition of "cardiopulmonary resuscitation training program" contains the same problem.

Also, there is a lack of consistency in the use of terms throughout this section and in the proposed amendment. For example in section (e) sometimes the term "person" is used to refer to those covered by the immunity, and at other times "person" is used to refer to the patient. In the proposed amendment to subsection (h) under the definition of "perceived medical emergency," now the term "individual" is first used to refer to those covered by the immunity, then, later in the same sentence, "individual" is used to refer to the patient. In addition, in that same sentence "a reasonable person" standard is referred to.

Therefore, the term "person" should be used to refer to the rescuer throughout the section. The term "patient" which is used in the proposed definition of "cardiopulmonary resuscitation" should be used to refer to the individual who is experiencing the need for medical assistance throughout the section. Because "reasonable person" is a legal term, it need not be changed

In addition to the above concerns, the Department has the following comments regarding those who should be covered by the immunity.

The proposed amendment to subsection (e), of section 663-1.5 on page 2, lines 19-21, reads, "[a]ny person," including [~~an employer~~] employers and schools, who [~~provides~~] provide for a cardiopulmonary resuscitation training program ..." This amendment should read, "any person who provides for a cardiopulmonary resuscitation training program...."

The more significant comment relates to the "any person" to whom the immunity covers. In subsection (e), the term "any person" should already include employers or schools. The term should already include not-for-profit associations or organizations, and charitable associations or organizations. Therefore, the language "an employer" or "employers and schools" is unnecessary and may have the unintended consequence of restricting those to whom the immunity is extended because only employers or schools are expressly included.

While the purpose of the bill is to encourage rather than to dissuade lay rescuers to provide emergency care by more broadly extending immunity to those who render the emergency care, the proposed amendment to subsection (e) is limiting.

The Department recommends consideration of the comments provided.

AED INSTITUTE of America, Inc.
Promoting community awareness of Automated External Defibrillators

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Support with Amendment
House Bill 2312 Relating to Torts
Friday, February 3, 2012
Location: Conference room 329 of the State Capitol

Heart disease is the number one killer of citizens in the United States. Every single day nearly 1000 individuals die from sudden cardiac arrest (SCA) in the United States. Every year, year after year, sudden cardiac arrest claims the lives of at least 325,000 people in the United States, including more that 6,000 young people under the age of 18 years old.. Cardiac arrest can happen to anyone, anywhere, and at anytime. Sudden cardiac arrest is a public health crisis.

In the state of Hawaii it is estimated that more than 1,000 citizens of our state will experience a cardiac arrest annually, of those only 5% will survive, but it does not have to be this way. SCA is completely treatable.

A number of reports have illustrated that bystander CPR can substantially improve rates of survival from SCA. A bystander is a person who happens to be near the victim and who is not part of the organized emergency response system. In most events, the bystanders do not have professional healthcare education. With early initiation of CPR survival rates improve, and when bystanders perform CPR well, the victim's chance of survival can double and even triple. In several studies, high-quality CPR was associated with a marked improvement in survival to hospital discharge. Furthermore, recent evidence suggests that CPR may be particularly important in cases of prolonged cardiac arrest (ie, an arrest duration of 4 to 5 minutes without treatment).

CPR is a highly accessible therapy that requires little medical training and no equipment when provided in its most basic form. Potential rescuers from school age to the elderly can learn CPR skills in as little as 20-30 minutes. With the new CPR they simply need their hands to save a life.

In the airports of Hawaii where widespread CPR/AED training has been provided, survival rates from witnessed SCA associated with ventricular fibrillation have been as high as 84%. Surpassing any other program in the country proving that equipping the public with the skills to perform the first 3 links in the American Heart Association chain of survival can make a dramatic difference in survival from SCA.

THE PROBLEM: If bystander CPR can markedly improve outcomes, why are our survival rates from out-of-hospital SCA still so poor? The low rate of bystander CPR performed is a significant contributor. Local reports have documented that in many communities, only 15% to 30% of SCA victims receive bystander CPR before Fire or EMS personnel arrive at the scene. Low rates of

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bystander CPR have been documented even in settings where trained rescuers were present. Given that the time interval for EMS arrival is often 7 to 8 minutes or longer and that survival falls 7% to 10% or each minute without CPR, the lack of bystander CPR has a large impact on outcomes.

In 2007 and again in 2009, the Hawaii Good Samaritan Law (H.B. 1537 pertaining to AEDs) was approved and released bystanders from any liability when using an AED no matter where the AED was located. However the bill did not include documented and stated coverage of a bystander performing CPR in a medical emergency. When teaching in the community every student has the same fear, FEAR of injuring the victim, FEAR of doing the wrong thing, and FEAR of liability. Even with sharing the current Good Samaritan law students will still ask "what if I perform CPR" am I covered. Most citizens believe that because it is not stated in the Good Samaritan Law then they are not covered. This FEAR is one of the reasons why Hawaii has an estimated 5% survival rate.

As the AED Program Coordinator for Hawaii's largest Public Access Defibrillation (PAD) Program I am here today to testify on behalf of House Bill 2312 Relating to Torts. The DOT-A has been responsible for the public implementation of over 125 Automated External Defibrillators (AED) on six islands and in 13 airports. Each of the AEDs has been placed in a public location for rapid response to a possible cardiac arrest victim. With the installation of the AEDs we felt the most important part of the program was to ensure that there would be a confident citizen to step forward, start chest compressions, and bring the AED to the victim's side. In the last six years we have educated more than 8000 airport employees, airport users, and concessionaires in a classroom format on how to respond to a cardiac arrest victim and how to perform proper CPR and use the AED. Our goal was to ensure that every airport user had the opportunity to have the education, knowledge, and confidence to save the life of a friend or loved one. The class teaches the student that you really do not need to know very much to save a life. But this is something that you do not know unless you are given the education. We share the law with each student but there is still an apprehension and concern about liability.

CPR is a potentially lifesaving intervention that can be implemented by the public without the need for expensive equipment or professional credentials. If the rate and quality of bystander CPR are increased substantially, the potential exists to save the lives of hundreds of victims of SCA in Hawaii each year. We can do the training and education but we need you to pass this bill to help alleviate the FEAR of liability to the potential responder.

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Amendment

We request that the definitions on page 4 of *Cardiopulmonary Resuscitation* be amended by deleting the words "and ventilations" (line 5) and "and breathing" (Line 6). Also in the definition of *CPR training program* we request the deletion the words "and ventilations" line 10 and to add the words "immediate notification of emergency medical services (911)" (line 9). This amendment will follow the 2010 American Heart Association guidelines for the lay responder with or without training.

Sincerely,

Pamela Foster, RN

President and CEO for AED Institute of America, Inc
Founder of Hawaii Heart Foundation (a local non-profit with the mission to improve the cardiac arrest survival rates in Hawaii through *Educating Hawaii to Save Lives*)
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